

## SECTION II—REMARKS

Applicants respectfully request reconsideration of the above referenced patent application for the following reasons:

### **Claims rejected under 35 U.S.C. § 103**

The Office Action rejected claims 30-39 under 35 U.S.C. § 103(a) as being unpatentable over “A Rate-one Full-diversity Low-Complexity Space-Time-Frequency Block Code (STFBC) for 4-Tx MIMO-OFDM” (“Gowrisankar”) in view of U.S. Patent No. 7,224,744 to Giannakis et al. (“Giannakis”). Applicants respectfully disagree.

Applicants respectfully point out that Gowrisankar is an improper reference under 35 U.S.C. § 103 because it was published **after the date of priority** of Applicants’ present application.

In particular, the Gowrisankar reference which is relied upon by the USPTO reflects a publication date of “2005” according to the “Notice of References Cited” attached to the present Office Action.

Applicants separately located an independent copy of the particular Gowrisankar reference cited by the Office Action and found that it has a more specific publication date of September of 2005, appearing in the IEEE publication titled “*Information Theory, 2005. ISIT 2005. Proceedings International Symposium on,*” having a particular publication date of 4-9 September, 2005, on pages 2090 through 2094. Its corresponding print ISBN is 0-7803-9151-9 and its IEEE digital object identifier is 10.1109/ISIT.2005.1523714.

Applicants' present application has a filing date of February 27, 2004, which pre-dates the publication date of the Gowrisankar reference relied upon by the present Office Action.

In accordance with 35 U.S.C. § 102 which sets for the "Conditions for patentability; novelty and loss of right to patent," Applicants "shall be entitled to a patent unless" one of the following conditions is established:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, **before the invention thereof by the applicant for patent**, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, **more than one year prior to the date of the application for patent in the United States**, or

...

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States **before the invention by the applicant for patent**, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; ...

Because the cited reference was filed **after** Applicants' own application for patent in the present case, Applicants submit that the Gowrisankar cannot sustain the present rejection.

At page 3, penultimate paragraph, the Office Action correctly concedes that Gowrisankar fails to disclose particular limitations which Applicants recite in independent claim 30, but asserts that Giannakis cures the admitted deficiencies of Gowrisankar.

Giannakis, however, whether considered individually or in combination with Gowrisankar, does not cure the deficiencies of Gowrisankar as discussed above with respect to

independent claim 30 because Giannakis does not disclose each of the limitations claimed by Applicants in the absence of the improper Gowrisankar reference.

Because Gowrisankar is an improper reference and because Giannakis fails to cure the deficiencies of Gowrisankar, Applicants respectfully submit that independent claim 30 is patentable over the references and in condition for allowance. Applicants further submit that independent claims 35 and 40, which recite similar limitations, as well as those claims which depend directly or indirectly upon independent claims 30, 35 and 40, and thus incorporate the limitations of their respective parent claims, are also patentable over the references and in condition for allowance for at least the same reasons as stated above with respect to independent claim 30 rejected under 35 U.S.C. § 103.

Accordingly, Applicants respectfully request the Examiner to withdraw the rejection to the claims under 35 U.S.C. §103.

**Claims rejected under 35 U.S.C. § 103**

The Office Action rejected claims 40-44 under 35 U.S.C. § 103(a) as being unpatentable over Gowrisankar in view of Giannakis and U.S. Patent No. 6,801,788 to Csapo et al. (“Csapo”).

Csapo, whether considered individually or in any combination with Gowrisankar and/or Giannakis, fails to cure the deficiencies of Gowrisankar and Giannakis as noted above with respect to the rejection of independent claim 30 under 35 U.S.C. § 103.

Independent claim 40 recites similar limitations to those of independent claim 30 which are not disclosed by Giannakis in the absence of the improper Gowrisankar reference, and thus, independent claim 40 is patentable over the references for at least the same reasons as stated above with respect to independent claim 30. Dependent claims 41-44 incorporate the limitations

of independent claim 40 upon which they directly or indirectly depend, and thus, the dependent claims are patentable over the combination of references and in condition for allowance for at least the same reasons as stated above.

Accordingly, Applicants respectfully request the Examiner to withdraw the rejection to the claims under 35 U.S.C. §103.

## CONCLUSION

Given the above remarks, all claims pending in the application are in condition for allowance. If the undersigned attorney has overlooked subject matter in any of the cited references that is relevant to allowance of the claims, the Examiner is requested to specifically point out where such subject matter may be found. Further, if there are any informalities or questions that can be addressed via telephone, the Examiner is encouraged to contact the undersigned attorney at (503) 439-8778.

### **Charge Deposit Account**

Please charge our Deposit Account No. 02-2666 for any additional fee(s) that may be due in this matter, and please credit the same deposit account for any overpayment.

Respectfully Submitted,

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